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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/399,630	09/20/1999	GARY M. REYNOLDS	KCC-12.681	2481

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EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/399,630

Applicant(s)

REYNOLDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-91 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: Claims 86-88 require a "rigid" members. Claims 63, 66 and 77 require a "compression resistant member". On page 18, lines 4 and 18 and page 25, lines 3-4, "rigid" and "compression resistant" appear to be set forth as the same thing. Therefore, it is unclear whether there is a difference between "rigid" and "compression resistant" members? If so what it is? Where was such difference originally disclosed. See Response to Arguments section *infra* also.

Appropriate correction is required.

Claim Objections

2. Applicant is advised that should claims 63, and 77 be found allowable, claims 86-87 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

See the discussion in paragraph 1 with regard to the terms "rigid" and "compression resistant". See Response to Arguments section *infra* also.

3. Claims 62-67 and 75-79 and 87 are objected to because of the following informalities: in claim 62, lines 2-3, delete "the gasketing assembly comprises", see page 14, lines 16 et seq of the instant application. In claim 65, lines 1-2, change "gasketing assembly" to --the gasket

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element--, see page 14, lines 16 et seq of the instant application. Appropriate correction is required. See Response to Arguments section infra also.

Claim Rejections - 35 USC § 112

4. Claims 63-67, 77 and 86-88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For the reasons set forth supra, it is unclear whether a "rigid" member and a "compression resistant" member are the same, i.e. if so, then as pointed out above claims 63 and 77 are the same as claims 86-87 respectively and if not, it is unclear what the difference is between the members in light of the description set forth in the specification. See Response to Argument section, infra.

Claim Language Interpretation

5. Due to the lack of clarity discussed supra, for the purposes of claims 63, 65, 77 and 86-88, any structure which opposes or slows pressing or squeezing together will be considered to meet the language "rigid" or "compression resistant". Also absent specific definition the term "tension" is given its ordinary meaning of "the act or process of stretching, the condition of being stretched, a force tending to stretch or elongate something" and the term "gasket" is given its ordinary meaning of "a seal". The terminology "joined" is interpreted to include both direct and indirect joining. The terminology "encased" as interpreted in light of the specification, see discussion supra, is defined as to at least partially enclose.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 60-91 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaar '794.

Claims 60, 62, 75, 80 and 82: see various embodiments of Figures 1-16, col. 1, lines 60 et seq, col. 3, line 44-col. 6, last line, especially col. 4, lines 11-24 (Note "preferably" also infers what is "preferably not" and the teachings of Schaar are not limited to only the preferred embodiments), the sentence bridging cols. 4-5 and col. 5, line 40-col. 6, line 2, i.e. the absorbent article is 26, the front waist section is 33a, the rear waist section is 33b, the stretchable waist band with opposite ends, and thereby its rear waist portion, is, e.g., 55 in Figure 13, the fasteners are 42, the intermediate section is 35, the absorbent portion is at least 36 in the section 35, the gasket assembly is at least layer 28 of 48, the at least one gasket element is at least a portion of panel C of 48, see Figures 1 and 6-8, the face portion is at least layer 28 of at least a portion of panel C, the thrust portion is at least one of the layers of at least a portion of panels A, B, D, E. With regard to lines 1-2, i.e. "adapted ... wearer", 8-9, "employable ... tension", and 13 et seq of claim 60, lines 2 et seq of claim 62 and similar language in claims 75, 80 and 82, see the portions cited supra which show and teach the gasket assembly against the remainder of the article 26 prior to use and the thrust portion(s) unfolding as the stretchable waist band is tensioned for application to the wearer under tension, and the remaining portions of the assembly 48 being deployed to gap away from the underlying surface to form a gasket or seal with the skin of the wearer, i.e. it is the Examiner's first position that the Schaar '794 reference teaches the function,

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capabilities, methodology or properties set forth in the claims. In any case, since the Schaar device includes the same structure as claimed, and the device is used in the same manner, i.e. placed on a wearer, for the same purpose, i.e. body waste containment, there is sufficient factual basis for one to conclude that even if Schaar does not explicitly teach the claimed functions, capabilities, methodology or properties, that the same structure of Schaar is also capable inherently of such claimed functions, capabilities, methodology or properties. See MPEP 2112.01

Claims 61, 75 and 81: see Figures and especially note Figure 10.

Claims 63, 66, 77 and 86-88: See Claim Language Interpretation section supra. Also the thrust portions include at least one layer, i.e. the topsheet, backsheet and, optionally, the absorbent pad, 28, 32 and 36, (Note again col. 4, lines 11-25) as well as at least a portion of panels A, B, D, E. For example compare the thickness of Figure 2 and Figures 6 and 23. It is also noted that all materials resist compression to some degree and the claims do not set forth any specific dimension of compression or a specific material. Therefore, there is sufficient factual evidence to conclude that the structure of Schaar, i.e. the folds, the number of layers, the thickness of the layers making up the thrust portions would inherently oppose or slow pressing together as best understood. See MPEP 2112.01

Claims 64 and 67: the inner covering is at the very least the portion of layer 32 of assembly 48 overlying, i.e. at least partially enclosing, the thrust portion. See also Claim Language Interpretation section.

Claims 65 and 76: there is a thrust portion on each side of 56, i.e. one thrust portion is at least one of the layers of at least a portion of panels A, B and the other thrust portion is at one of the layers of at least a portion of panels D, E.

Claims 68-70 and 83: see discussion of claims supra and col. 5, lines 44-48 again.

Claims 71 and 78: one gasket element is at least a portion of panel C to one side of 56 in Figure 6 and the other gasket element is at least a portion of the panel C to the other side of 56.

Claims 72, 79 and 84: see discussion of claims 60, 62 supra and layer 32 of assembly 48.

Claims 73 and 85: see discussion of claim 71.

Claim 74: see discussion of claims supra especially claim 72 and Figures 13 and 6-8. It is noted that the American Heritage Dictionary defines "terminal" as "Of, pertaining to, situated at or forming an end or boundary". Therefore, the claims do not require the ends of the thrust portions be discrete just that some boundary is defined of the portion, i.e. the boundary defined by the fold 44b or 44a is connected to the bodyside liner and the fold 44a or the lateral edge of panel A is connected to the elastic waist band and the boundary defined by the fold 44c or 44d is connected to the bodyside liner and the fold 44d or the edge of panel E is connected to the elastic waist band, i.e. at least apportion of the panels read on the legs.

Claims 89-91: see elements 48, 53 and 53 in Figure 14.

See also Response to Arguments section infra.

Response to Arguments

8. Applicant's arguments have been carefully considered but are either deemed moot in that the issue discussed has not been reraised or are deemed nonpersuasive for the reasons

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discussed supra. Specifically, Applicants' remarks bridging pages 10-11 and 12-13 with regard to the language "rigid" and "compression resistant" have been considered but are deemed not persuasive because the terminology "otherwise" means "in another way" so the phrase "a rigid or otherwise effective compression resistant member" means "a rigid or" in another way "effective compression resistant member". Therefore the disclosure appears to define "rigid" as "effectively compression resistant" contrary to Applicants' remarks. If Applicant should maintain such arguments it is suggested that the definition of "rigid" and the definition of "effective compression resistant" be clearly set forth. With regard to the arguments with respect to the objections of claims 62 and 65, the Action clearly sets forth the basis in the disclosure for the assertions. Applicants' remarks on pages 13-17 with respect to the prior art have been considered but are deemed not persuasive for the reasons set forth in the prior art rejection supra, e.g. Schaar at, e.g., the Figures shows deployment upon tensioning, a bodyside liner deployable by the assembly, terminal ends, i.e. the remarks are narrower in scope than the claim language and/or the teaching of the prior art.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show various gaskets.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the addition of claims 89-91.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 30, 2004